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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,741	12/10/2001	David J. Miller	0150-0005	7020
20551	7590	06/30/2005	EXAMINER	
THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 P.O. BOX 1219 SANDY, UT 84070				WILLIAMS, CATHERINE SERKE
ART UNIT		PAPER NUMBER		
		3763		

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Sp

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/014,741	MILLER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Catherine S. Williams	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 February 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 29-33,36-44 and 46-61 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20,24,25,34 and 35 is/are rejected.
- 7) Claim(s) 21-23,26-28 and 45 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/18/02</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This supplemental action replaces the previous office action dated 4/15/05.

### ***Election/Restrictions***

Applicant's election without traverse of Group I and species b in the reply filed on 1/12/05 is acknowledged.

Claims 30-33,36-44 and 46-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/12/05.

Additionally, claim 29 is withdrawn since applicant did not elect an embodiment including the application of direct current.

### ***Priority***

The current status of prior application numbers 09/783,138 and 09/783,696 needs to be included in the first priority paragraph of the specification.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,24-25 and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Tapper (USPN 5,224,927). Tapper discloses a method that includes the steps of applying an

alternating current to a localized region of a body tissue (skin/mucosa) to lower and maintain a target resistance level (see 4:60-63) and delivering a barrier modifying agent to reduce the voltage level necessary (see 6:50-57). The agent can be delivered prior and during the current application (see 14:1-10). The agent can be an ionic, specifically cationic, surfactant (see 14:19-24). The body tissue is skin/mucosa and the area of the localized region of the body tissue is approximately in the range of 5cm<sup>2</sup> to 30cm<sup>2</sup>. See figure 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tapper.

Tapper meets the claim limitations as described above but fails to include the barrier-modifying agent as listed in the above claims.

However, at the time of the invention, it would have been an obvious design choice by one skilled in the art to substitute any of the listed barrier-modifying agents into the invention of Tapper. Applicant has not disclosed that any of these particular agents in relation to each other provide a particular advantage, are used for particular purpose or solve a problem over the others. Additionally, one skilled in the art would recognize that the barrier modifying agent of Tapper or the claimed barrier modifying agents would perform equally well in lowering the resistance of the skin to enhance permeability in light of the fact that it is the process of increasing permeability and thereby lowering resistance that allows for a reduction in the

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necessary voltage which could be achieved with the prior art barrier modifying agent or the claimed agents.

*Allowable Subject Matter*

Claims 21-23,26-28 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571-272-4970. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Catherine S. Williams*  
Catherine S. Williams

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